

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT ("Agreement") is made and entered into and effective as of the date of the last signature on this Agreement and is by and between Sprint Communications Company L.P., a Delaware limited partnership, and its successors and assigns ("SCCLP"), whose mailing address is 6220 Sprint Parkway, KSOPHD0101-Z2040, Overland Park, KS 66251, and The City of Upland, a California municipal corporation ("City") whose mailing address is 460 N. Euclid Avenue, Upland, CA 91786. SCCLP and City may be referred to individually as "Party" or collectively as the "Parties." Sprint Communications LLC is now a wholly-owned subsidiary of T-Mobile USA, Inc. pursuant to the T-Mobile USA, Inc. (together with its subsidiaries) acquisition of Sprint Communications LLC (together with SCCLP and its other subsidiaries).

BACKGROUND:

A. City plans to undertake pavement rehabilitation, sewer, water, and street lighting improvements on Alpine Street, Vernon Drive, and Palm Avenue in Upland, California within Southern Pacific Transportation Company right of way ("Project"). SCCLP owns fiber optic cable and other equipment ("Facilities") within the aforementioned right of way pursuant to a Memorandum of Easement dated March 26, 1996 with Southern Pacific Transportation Company and/or its successors and assigns.

B. As a result of the Project construction, it is necessary for SCCLP to relocate its Facilities in accordance with, and as more particularly described in, the attached **Exhibit "A"** ("Engineering Drawing") and **Exhibit "B"** ("Scope of Work"), both of which are incorporated into this Agreement.

C. SCCLP, under the terms stated in this Agreement, is willing to relocate its Facilities within the right of way and to accommodate City's work, if City reimburses SCCLP for all of its actual costs, both direct and indirect, in making the modifications.

AGREEMENT

In consideration of the promises and mutual covenants contained in this Agreement, and other good and valuable consideration the receipt and sufficiency of which is acknowledged, SCCLP and City agree as follows:

1. SCCLP will perform the necessary relocation work in accordance with the attached Exhibits "A" and "B" ("Work") subject to the terms and provisions of this Agreement.

2. City represents and warrants to SCCLP that Exhibits "A" and "B" accurately represent the Scope of Work requested of SCCLP.

3. City may, at its own expense, inspect any construction by SCCLP under this Agreement, to assure itself that the SCCLP Work is being performed in accordance with the Scope of Work.

4. City will bear and be responsible for and pay in accordance herewith all direct and indirect costs incurred by SCCLP and relating to the relocation Work, including, but not limited to, labor, materials, construction, damages, administrative overhead, engineering review work, taxes, and legal fees.

5. The total cost of the Work is estimated to be Ninety Eight Thousand Four Hundred Sixty Three Dollars and Ninety Nine Cents (\$98,463.99), as set forth in **Exhibit "C"**. Final actual costs may be more or less than the estimate, which will not be construed as a limitation of costs for the Work.

SCCLP will promptly provide notice to City if it becomes obvious to SCCLP that the final actual costs will exceed the estimate by more than fifteen percent (15%).

6. City must furnish a cashier's check or wire transfer in the amount of Ninety Eight Thousand Four Hundred Sixty Three Dollars and Ninety Nine Cents (\$98,463.99) to guarantee the payment of all sums which may at any time become due from City to SCCLP under this Agreement. If City chooses to send a cashier's check, the check must be payable to Sprint Communications Company L.P. and sent to SCCLP before commencement of the relocation Work. Any and all costs in excess of the amount of the prepayment will be billed to City when the Work has been completed, and City will be liable for any amount, which exceeds the amount of the prepayment. If the prepayment exceeds the amount of the final costs, then SCCLP will refund any amounts over the costs.

7. Within a reasonable time after SCCLP pays all of the invoices associated with the Project and the as-built drawings are complete, SCCLP will furnish an accounting of final actual costs and provide City an invoice of the same. City must pay the full amount of such invoice within thirty (30) days after receipt. Payments shall be sent to:

UMB Bank
Sprint
P.O. Box 871197
Kansas City, MO 64187
PID _____

8. All operations and work performed by City above or adjacent to the fiber optic cable location must be performed in a workmanlike and safe manner and in conformance with all applicable industry standards and government regulations, and in accordance with any restrictions and conditions that may be imposed by SCCLP from time to time. No work may be performed within the existing right of way by City until the fiber optic cable and other equipment modifications have been completed.

9. Exclusive of Saturday, Sunday and legal holidays, notice must be given to SCCLP by City, at least 48 hours in advance of commencement of any work on or adjacent to the fiber optic cable. The notice shall be given to SCCLP at telephone number 1-800-521-0579.

10. If City breaches any of the terms, covenants, or provisions of this Agreement, and SCCLP commences litigation to enforce any provisions of this Agreement, the cost of attorneys' fees and the attendant expenses will be payable to SCCLP by City upon demand.

11. Insofar as it legally may, City will indemnify, defend, and hold SCCLP, its officers directors, agents and employees harmless from all loss, claims, liability and costs incurred by SCCLP, including, without limitation, losses resulting from claims for damages to property or injuries to or death of persons, judgments, court costs and attorneys' fees, which arise out of or are claimed to have arisen out of the acts or omissions of City, its contractors, subcontractors, representatives, agents, or employees with respect to the Project, including, but not limited to, the construction, maintenance, presence on the right of way, or other operations or activities of City.

12. The Parties expressly understand that SCCLP is not abandoning any rights, title, or interest it may have in the right of way, all such rights, title, and interest being expressly reserved.

13. The Parties expressly understand that there is a shortage in the availability of fiber optic cable due to a reduction in supply. SCCLP shall not be held responsible for Project delays due to delays in the availability of fiber optic cable or other components.

14. Except as otherwise specifically provided in this Agreement, neither Party shall be in default under this Agreement if and to the extent that any failure or delay in a Party's performance of one or more of its obligations hereunder, excepting City's obligation to make payments required under this Agreement, is caused by any of the following conditions, and such Party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delays: unforeseen act of God; fire; flood; fiber, cable, conduit or other material shortages or unavailability or other delay in delivery not resulting from the responsible Party's failure to timely place orders therefore; lack of or delay in transportation not resulting from the responsible Party's act or omission to act; government codes, ordinances, laws, rules, regulations or restrictions; war or civil disorder; any other cause beyond the reasonable control of such Party (each a "Force Majeure Event"). The Party claiming relief of a Force Majeure Event must promptly notify the other Party in writing of the existence of the event relied on and the cessation or termination of the event.

15. This Agreement supersedes every antecedent or concurrent oral and/or written declaration and/or understanding pertaining to the fiber optic cable modification work by and between SCCLP and City.

16. The terms of this Agreement shall be binding and inure to the benefits of the Parties to this Agreement and their successors and assigns.

17. INTENTIONALLY DELETED

18. Notwithstanding anything to the contrary contained in this Agreement, SCCLP will not be required to perform any cable modification work contemplated by this Agreement during the period of November 15th of any year through January 2nd of the following year.

19. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The Parties agree that an electronic copy of a signed signature page of a counterpart agreement shall evidence and constitute valid execution of this Agreement and shall be binding on a Party to the same extent as the original signature counterpart copy. This Agreement may be accepted and signed in electronic form (e.g., by an electronic or digital signature or other means of demonstrating assent) and each Party's electronic acceptance and signature will be deemed binding between the Parties. Each Party acknowledges and agrees it will not contest the validity or enforceability of this Agreement, including under any applicable statute of frauds, because it was accepted and/or signed in electronic form. Electronic records of a Party when produced in hard copy form shall constitute business records and shall have the same validity as any other generally recognized business records.

20. Any notice required to be delivered pursuant to this Agreement shall be in writing and shall be deemed received when: (a) personally delivered (including delivery via commercial messenger service); (b) one business day after being deposited with a nationally recognized overnight courier service, charges prepaid, and properly addressed for next-day delivery; or (c) transmitted via e-mail to the applicable email address(es) set forth below. For purposes of this subsection, the addresses of each Party shall be that set forth above. Either Party may change its address for notice from time to time by delivery of at least ten (10) days prior notice of such change to the other Party in the manner prescribed in this Agreement.

21. This Agreement shall be construed under and in accordance with the laws of the State where the Property is located, and all obligations of the Parties created under this Agreement are performable in the County where the Property is located.

22. Neither Party may assign this Agreement without the other Party's prior written consent, which consent may not be unreasonably withheld, conditioned, or delayed. Any purported assignment of this Agreement by a Party without the other Party's prior written consent shall be void.

23. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement. Furthermore, in lieu of any such invalid, illegal, or unenforceable provision, a provision as similar to such invalid, illegal, or unenforceable provision as may be possible shall be automatically added to this Agreement and shall be valid, legal, and enforceable.

24. This Agreement constitutes the sole and only agreement of the Parties with respect to the subject matter of this Agreement and supersedes any prior understandings or written or oral agreements between the Parties respecting the subject matter of this Agreement and can not be changed except by their written consent.

25. Whenever any determination is to be made or action to be taken on a date specified in this Agreement, if such date shall fall upon a Saturday, Sunday, or holiday observed by federal savings banks in the state where the Property is located, the date for such determination or action shall be extended to the first business day immediately following.

26. Each Party represents and warrants to the other that this Agreement has been validly entered into by it and that it has full legal power, right, and authority to perform its obligations under this Agreement.

27. Each Party represents and warrants to the other Party that the consent or approval of no third party, including, without limitation, a lender, is required with respect to the execution of this Agreement, or if any such third-party consent or approval is required, such Party has obtained any and all such consents or approvals.

28. Each Party represents and warrants to the other Party that the person executing this Agreement on behalf of such Party has the authority to execute this Agreement and bind such Party to the terms and provisions of this Agreement.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

The Parties have caused this Agreement to be executed by their proper duly authorized officials as of the dates indicated below.

THE CITY OF UPLAND

BY: 

NAME: Michael Blay

TITLE: City Manager

DATE: 1-24-23

SPRINT COMMUNICATIONS COMPANY L.P.,
a Delaware limited partnership (SCCLP)

BY: 

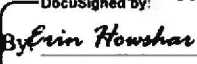
NAME: Mike Simpson

TITLE: SVP, Chief Procurement Officer

DATE: 02.24.23

T-Mobile Legal Approval

DocuSigned by:

By: 

~~Erin Howshar~~, Senior Corporate Counsel

ATTEST:

By: 

Keri Johnson, City Clerk

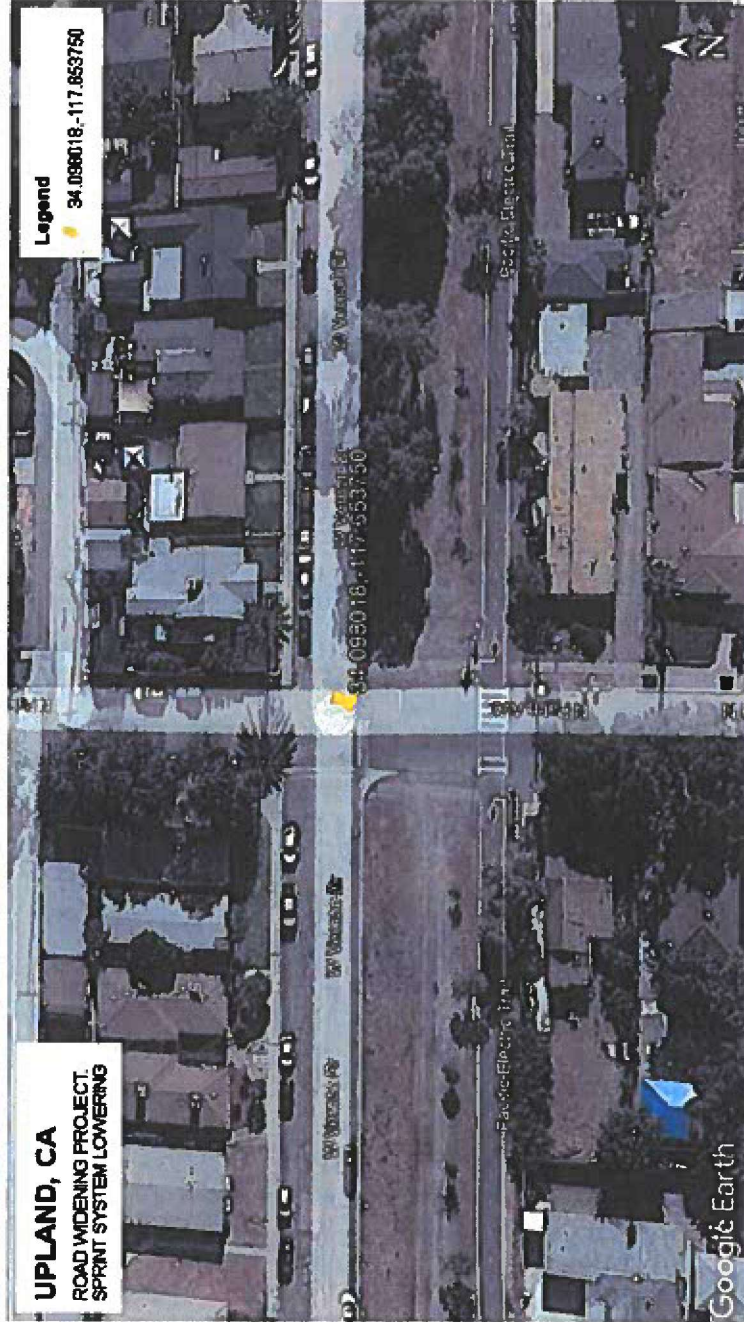
APPROVED AS TO FORM:

By: 

Best Best & Krieger LLP
City Attorney

EXHIBIT A
ENGINEERING DRAWING

UPLAND, CA
PALM AVE WIDENING PROJECT
SPRINT SYSTEM LOWERING AND STEEL
CASING PLACEMENT



CONTACT INFORMATION FOR SPRINT-MOBILE
JEFF YORK
ENGINEER / OUTSIGHT UNIT ENGINEER - WEST
M: 951-247-7531
C: 951-299-7333
jeff.york@sprint-mobile.com

BRIAN SMITH
CASCADE DESIGN/CONTRACTOR FOR SPRINT-MOBILE
M: 949-228-1880
brian.smith@gmail.com

Sprint Proprietary Information: Restricted

UPLAND, CA PALM AVE SPRINT LOWERING PROJECT	
SHEET 1 of 3	NETWORK

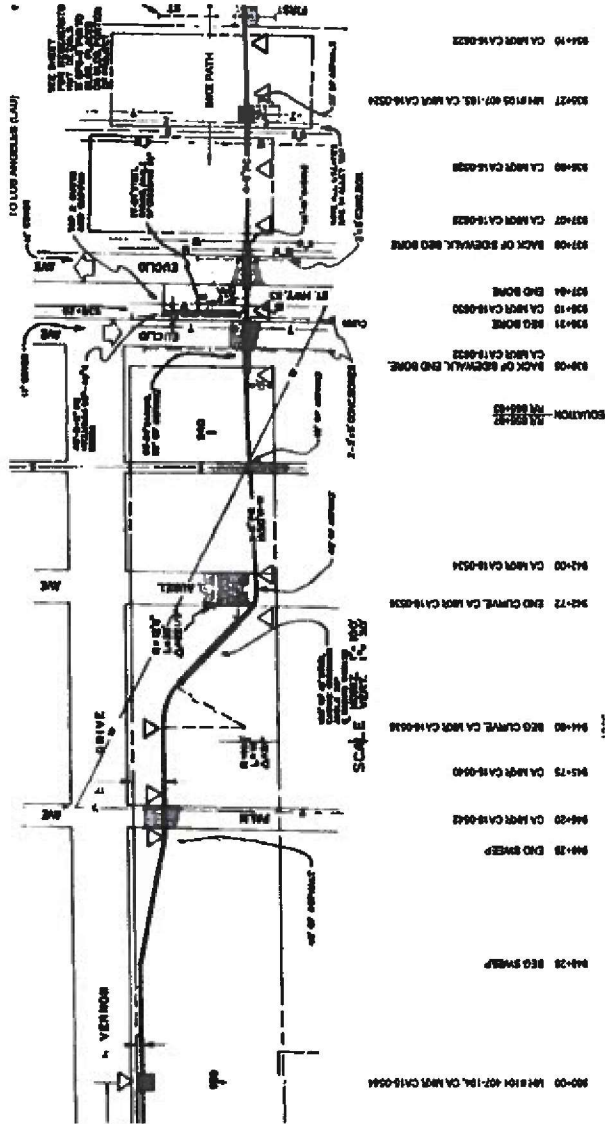
NORTH	OLD DRAWING NUMBER NEW DRAWING NUMBER DATE
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PALM AVE SOW

7.9 The contractor shall prove the Sprint system after our construction is completed from Sprint MH # 104 to Sprint MH # 105 (Refer to the proposed construction plans for details). A 4" long by 1" diameter mandrel is required for proving the conduit.

7.10 The contractor shall prove the Sprint system after the Cities construction is completed from Sprint MH # 104 to Sprint MH # 105 (Refer to the proposed construction plans for details). A 4" long by 1" diameter mandrel is required for proving the conduit.

7.11 The contractor shall weld the Sprint MH lids closed after we prove the system BOTH TIMES.



NOT TO SCALE



UPLAND, CA
PALM AVE
SPRINT LOWERING PROJECT
SHEET 3 OF 3
MTWRS

OLD DRAWING NUMBER
DATE
REV
PART NO
EXCL. CO
APPROVE

Sprint Proprietary Information: Restrictor

PROVE (3) VACANT 1.25" INNERDUCT

1473'

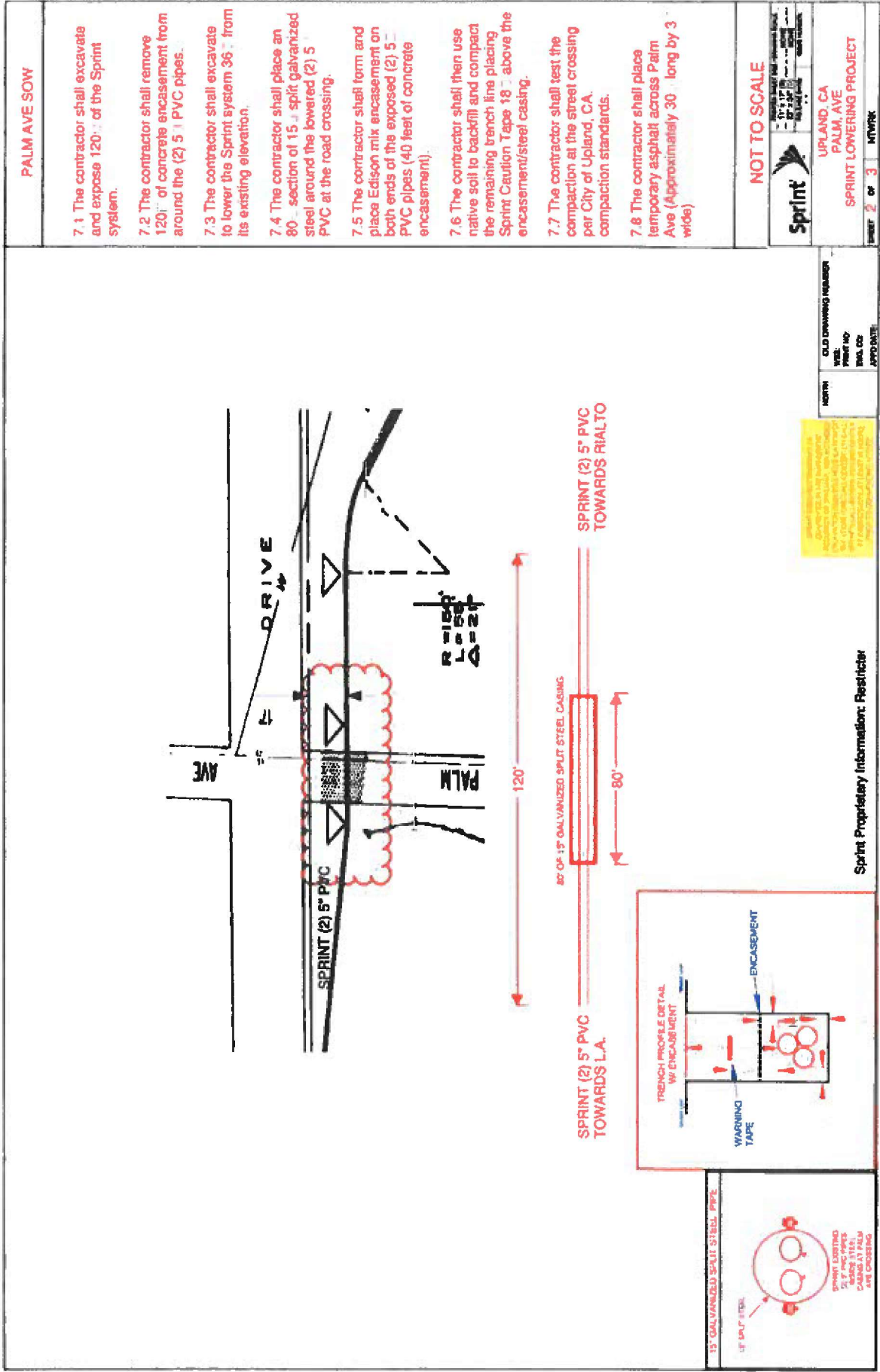


EXHIBIT B
SCOPE OF WORK

PROJECT DESCRIPTION, LOCATION AND SCOPE OF WORK

TITLE: UPLAND – N. PALM AVE PROJECT

Sprint Work Order No.: 92766W187

1.0 DESCRIPTION AND LOCATION

The work consists of excavating and exposing 120 feet of the Sprint system at North Palm Ave in Upland CA. Once the encasement is exposed the contractor will need to remove the concrete from around the (2) 5" PVC Pipes. The contractor will then need to lower the system 36" from its current elevation at the road crossing and place an 80' section of 15" Galvanized Split Steel around the Sprint (2) 5" PVC Pipes as shown on the proposed construction plans.

The remaining exposed (2) 5" PVC on both ends of the excavation will then need to be formed and encased with an Edison Mix Concrete. Refer to the proposed construction plans for details of the Sprint Encasement.

The contractor will then prove the Sprint system from MH # 104 to MH # 105 to make sure our construction did not affect the system continuity. Both MH's will then be welded shut for security.

Once the City finished their street work the Sprint system will then need to be proved once again to make sure the system still has good continuity from MH # 104 to MH # 105. Both MH's will then be welded shut for security.

LOCATION: GPS=34.098018,-117.653750

2.0 SPECIFICATIONS

2.1 The work shall be performed in strict accordance with the Sprint Specifications for Construction, Installing and Splicing USSCIS NO. SCIMOSP REV. 99-1. Please note that this document contains references to specifications and manufacturers that may be out of date. Please refer all questions and inquiries regarding interpretations of this document to the Sprint Outside Plant Engineer.

3.0 MATERIALS

- 3.1 The contractor shall provide all materials in accordance with the Specification stated in the USSCIS NO. SCIMOSP REV. 99-1.
- 3.2 The contractor shall provide all materials as may be needed to complete this project except cable, cable splicing hardware, route marker signs and any items proprietary to Sprint.

4.0 PERMITS

- 4.1 The contractor will pay for any City of Upland permits.
- 4.2 Sprint shall pay the contractor the actual cost of the permit plus any markup as defined by the Sprint Master agreement.

- 4.3 Contractor shall provide copies of all permits to Sprint prior to proceeding with the work and shall provide copies of all final acceptance documents after the work is completed and before final invoicing.

5.0 BILLING AND COMMERCIAL TERMS

- 5.1 Contractor shall submit invoices as described in the master agreement. Invoice payment terms shall be net 60 days from the date the invoice is submitted in the Sprint electronic billing system. Prior to submitting the electronic invoice, the Contractor shall submit a "paper" invoice to the OSP Engineer for review and approval. These can be actual paper, but it is preferred that they are PDF documents.
- 5.2 Prior to billing for any work that is subject to a preliminary lien notice, the contractor shall secure and provide an unconditional release for each preliminary notice. Contractor shall notify all suppliers that may provide preliminary lien notices that the appropriate address for Sprint is 2592 Dupont Drive, Irvine, CA, 92612.

6.0 LOCATES

- 6.1 Contractor shall be responsible for all locates of other utilities and/or substructures. No excavation work shall be permitted until all locates are performed. All existing substructure shall be positively identified prior to and during excavation activity.

7.0 THE WORK

- 7.1 The contractor shall excavate and expose 120' of the Sprint system.
- 7.2 The contractor shall remove 120' of concrete encasement from around the (2) 5" PVC pipes.
- 7.3 The contractor shall excavate to lower the Sprint system 36" from its existing elevation.
- 7.4 The contractor shall place an 80' section of 15" split galvanized steel around the lowered (2) 5" PVC at the road crossing.
- 7.5 The contractor shall form and place Edison mix encasement on both ends of the exposed (2) 5" PVC pipes (40 feet of concrete encasement).
- 7.6 The contractor shall then use native soil to backfill and compact the remaining trench line placing Sprint Caution Tape 18" above the encasement/steel casing.
- 7.7 The contractor shall test the compaction at the street crossing per City of Upland, CA, compaction standards.
- 7.8 The contractor shall place temporary asphalt across Palm Ave (Approximately 30' long by 3' wide).
- 7.9 The contractor shall prove the Sprint system after our construction is completed from Sprint MH # 104 to Sprint MH # 105 (Refer to the proposed construction plans for details). A 4" long by 1" diameter mandrel is required for proving the conduit.
- 7.10 The contractor shall prove the Sprint system after the Cities construction is completed from Sprint MH # 104 to Sprint MH # 105 (Refer to the proposed construction plans for details). A 4" long by 1" diameter mandrel is required for proving the conduit.
- 7.11 The contractor shall weld the Sprint MH lids closed after we prove the system BOTH TIMES.

The contractor shall clean up any construction debris and shall leave the construction sites neat and clean each day.

Extreme caution shall be used when performing any work on or near the conduits and cables. Under NO circumstances shall any work be performed that may cause the cable(s) to be damaged or cut. All work involving live fiber optic cables and conduits shall be performed under the direct supervision of the owner of the cable.

8.0 Notices

8.1 The contractor shall contact the following, one full week prior to commencing construction:

Underground Service Alert of California (800) 227-2600

Sprint – Jeff York – Office: 951-347-0570, M: 858-526-7533

Cascade Design – Contractor for Sprint - Brian Smith – 949-226-1980

END SCOPE OF WORK

MATERIAL LIST

This is a guide and may not include all materials to complete the project. (See the Engineer for Sprint Materials List for acceptable materials.)

MATERIAL SUPPLIED BY THE CONTRACTOR

- 80' of 15" Galvanized Split Steel Pipe
- Edison Mix Concrete As Needed For Encasing The Sprint (2) 5" PVC On Both Sides Of The Steel Pipe
- Steel Plates To Cover The Sprint System (120 Feet)
- Temporary Asphalt As Needed For Road Crossing
- 4" Long By 1" Mandrel
- 10,000' of 2500 lbs Mule Tape

MATERIAL SUPPLIED BY SPRINT

Sprint Caution Tape

EMS Marker if needed

EXHIBIT C
ESTIMATED COSTS

Cost Estimates: RA Cost Estimates PID 92766W187 - CA Upland Palm Ave Improvement

					PERA Agreement	CONST. Agreement	PROJECT TOTAL
Sprint Labor - Internal							
Outside Plant Engineer PERA	6.00 Hours	\$75.00	\$450.00				
Outside Plant Engineer CONST.	8.00 Hours	\$75.00	\$600.00				
Supervisor, Technician	0.00 Hours	\$75.00	\$0.00				
Technician, Standby	0.00 Hours	\$75.00	\$0.00				
Engineering Records	4.00 Hours	\$75.00	\$300.00				
Subtotal				\$450.00	\$900.00		\$1,350.00
Sprint Contract Professional Services							
Engineering/PERA	22.00 Hours	\$100.00	\$2,200.00				
Engineering/INSP	144.00 Hours	\$100.00	\$14,400.00				
Subtotal				\$2,200.00	\$14,400.00		\$16,600.00
Sprint Contract Labor and Equipment							
Labor & Equipment			\$54,169.00	\$0.00	\$54,169.00		\$54,169.00
Subtotal							
Sprint Materials							
Materials			\$5,029.00				
Subtotal				\$0.00	\$5,029.00		\$5,029.00
Project Subtotal							
							\$77,148.00
G & A Overhead @ 27.63% of overall project cost							
							\$21,315.99
Project TOTAL							
							\$98,463.99